

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
before the
Board of Patent Appeals and Interferences

Appln. Ser. No.:	Filed:	Inventor(s):	Atty Dkt:
09/543,951	6 April 2000	W. Dalton <i>et al.</i>	110TC-015A (1633-015A)
Title: Improved Brush Seal Designs for Turbines and Similar Rotary Apparatus			
Examiner: M. Rogers			Art Unit: 3677

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

5 Pages Total **VIA FACSIMILE**
703-308-6199

08/19/2004 SDIRETAL 00000007 09543951

01 FC:1460 130.00 DA

PETITION UNDER 37 C.F.R. §1.183
REQUESTING SUSPENSION OF § 1.194(b) REQUIREMENT

Dear Sir:

In complete and timely response to the facsimile transmission on 9 August 2004, of a Notification of Non-Compliance Regarding Oral Hearing, which set a response date of two weeks, your Petitioner respectfully requests waiver of the requirement under § 1.194(b) that the request for oral hearing be submitted on a separate paper.

Please charge the Petition fee of \$130 to the undersigned's Deposit Acct. No. 502144.

The appeal of the final rejections of the claims of this application has been assigned Appeal No. 2004-1925. The Docketing Notice indicates that no oral hearing has been requested.

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1. Your Petitioner requests that the separate paper requirement under 37 C.F.R. §1.194(b) be suspended. Applicants' timely-filed Reply Brief included a request for oral hearing instead of such request being presented in a separate paper as required under §1.194(b). The fee for an oral hearing was timely paid at the time of filing the Reply Brief with the incorporated notice.
2. Facts occurring at the time of filing the Reply Brief, where the request for oral hearing should have been presented in a separate paper, are presented with the undersigned's attached Declaration. As set forth therein, the situation was extraordinary rather than a normal course.
3. Your Petitioner would first note that the suspension requested does not relate to any statutory requirement, the proceeding is not *inter partes*, and the requirement in §1.194(b) is more procedural than substantive. Understandably, the Rule is designed, in some part, to facilitate the administrative operation of the Board, and at least to that extent the failure to follow §1.194(b) is earnestly regretted.
4. It is proposed that the failure to follow the requirement of §1.194(b) to submit the request on a separate paper, in light of the fact that an actual request was made within the Reply Brief and the fee for the oral hearing was submitted, all being timely submitted, should be viewed in the Commissioner's discretion akin to the "unintentional" standard than to an "unavoidable" standard. *E.g., In re Bryan*, 2 U.S.P.Q.2d 1215 (Comm'r Pats. 1986). The Commissioner's discretion under §1.183 has been termed "inherently flexible." *Mobil Oil Corp. v. Dann*, 198 U.S.P.Q. 347, 349 (D.C.D.C. 1978) (footnote 3).

5. During the substantive prosecution with the Examiner, Applicants emphasized and argued that, as claimed, the invention operates dynamically in the environment of a turbine whereas the primary reference operates statically in the same environment, even though both devices perform essentially the same sealing function under normal operating conditions. It is believed that an oral hearing is desirable, if not essential, for a full and complete appreciation of this argument in light of the rejection, consonant with the admonition in §1.194(a), and that justice requires the opportunity to present this argument orally.
6. In view of all of the foregoing and the attached Declaration, your Petitioner respectfully requests that the requirement under §1.194(b) that the request for oral hearing be presented on a separate paper be waived and that an oral hearing be held.

Respectfully submitted,

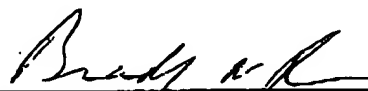
**CERTIFICATE OF MAILING OR
TRANSMISSION – 37 CFR 1.8**

I hereby certify that I have a reasonable basis that this paper, along with any referred to above, (i) are being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, or (ii) are being transmitted to the U.S. Patent & Trademark Office in accordance with 37 CFR § 1.8(d).

DATE: 18 Aug 2004

NAME: Brad Ruben

SIGNATURE: Brad Ruben


Bradley N. Ruben, Reg. No. 32,058
Bradley N. Ruben, PC
463 First St., Suite 5A
Hoboken, NJ 07030-1859
201-239-0707 (fax -0734)
mail@rubenpatent.com

18 August 2004